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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 122

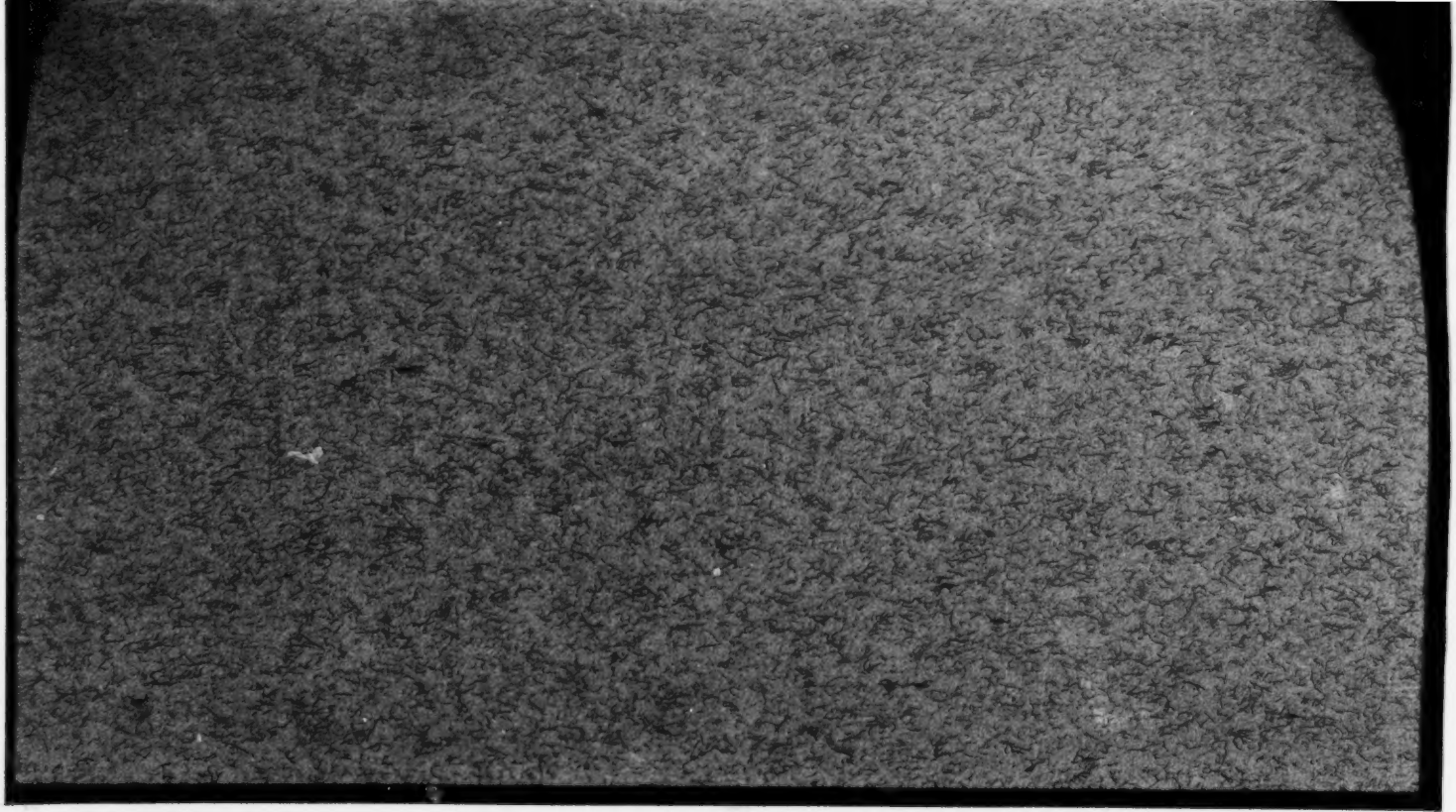
GUY J. D'ANTONIO,
Petitioner,

vs.

MRS. GEORGIE REAGON,
Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA, AND BRIEF IN SUPPORT THEREOF.

Lewis R. Graham,
*Counsel for Petitioner.*



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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1948**

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# No. 122

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GUY J. D'ANTONIO,

*Petitioner,*

*vs.*

MRS. GEORGIE REAGON

IN RE: MRS. GEORGIE REAGON APPLYING FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA

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## PETITION FOR WRIT

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*To the Honorable the Supreme Court of the United States of America:*

Mrs. Georgie Reagon, a resident of the City of New Orleans, Louisiana, of full age, brings this her petition for a Writ of Certiorari to be directed to the Court of Appeal for the Parish of Orleans, Louisiana, to review a judgment and decree of said Court of Appeal rendered on January 29, 1948, rehearing refused on February 3, 1948.

Which said judgment affirmed a judgment rendered by the First City Court of the City of New Orleans, Louisiana

rendered on September 15, 1947 ordering the eviction of this petitioner, Mrs. Reagon, from the premises, No. 2300-2302 Ursuline Avenue, which had been leased to her by Guy J. D'Antonio, original plaintiff and defendant here, and in support of this petition shows:

I

That this proceeding was begun in the First City Court of the City of New Orleans, Louisiana (not a court of record where the amount involved is less than One hundred dollars) by a motion and order (numbered 2 in the Transcript of Record filed herewith) on said Mrs. Reagon to show cause why she should not surrender possession of the said premises which had been leased to her by said Guy J. D'Antonio, the landlord, or be evicted therefrom, the basis for the said demand being that her possession and occupancy was not protected by the United States Housing and Rent Act of 1947, although not so specifically stated in the motion.

II

That said motion and rule to show cause was filed on September 4th, 1947, after the Housing and Rent Act of 1947 had become effective.

III

That said Mrs. Reagon duly filed her pleadings, first, an Exception of No cause of Action and an answer in which she alleged that the premises involved in the suit were occupied by her as her dwelling and also were occupied by others as a dwelling, thereby bringing the said housing accommodations under the protection of Section 209, (a) sub-paragraph (1) B, and Sec. 209, (a) sub-paragraph 5 of the Housing and Rent Act of 1947, Transcript pages 6 and 7.

IV

That after a trial in the First City Court, a judgment was rendered on September 15th, 1947, ordering said Mrs. Reagon to deliver possession of the leased premises or be evicted therefrom—Page 8 of Transcript of Record.

V

That under the law of Louisiana, since the monthly rental was less than One hundred dollars ($100.00) no record was made of the evidence produced in the court of original jurisdiction, viz., First City Court of New Orleans; Constitution of Louisiana of 1921, Art. VII, Sec. 91.

VI

That an appeal from the judgment of the First City Court of the City of New Orleans was duly taken to the Court of Appeal for the Parish of Orleans, where under the law of Louisiana the whole case was heard and tried *de novo: Livaudais* v. *Lee She Tung*, 197 La. 844.

VII

That a motion to dismiss the appeal was filed in the said Court of Appeal—Transcript of Record, page 12, but it was denied by the Court. Transcript of Record, page 16.

VIII

That on January 29th, 1948, the said Court of Appeal rendered a judgment affirming the judgment of the lower court, which had ordered the eviction, and said Court of Appeal refused a Rehearing on February—Transcript of Record, pages 17 and 19.

IX

That under the law of Louisiana, the judgment of the said Court of Appeal in cases appealed to it from the said

First City Court is final and not subject to appeal; but such judgments are subject only to the supervisory power of the Supreme Court of the State of Louisiana by means of a Writ of Certiorari.

X

That at the trial of this case *de novo* in the said Court of Appeal, no record was made of the evidence. But as authorized by Articles 602 and 603 of the Code of Practice of Louisiana an Agreed Statement of Facts was signed by both parties litigant, and is included in the Transcript of Record at pages 20, 21, and 22.

XI

That a petition for a Writ of Certiorari was duly and timely presented to the Supreme Court of the State of Louisiana; on March 27, 1948, the Supreme Court of the State of Louisiana refused to grant said Writ.

XII

That a duly certified copy of the record is presented herewith as part of this petition, and said record shows that there is no material conflict of fact.

XIII

That petitioner here relies solely upon the provisions of Section 209 of the Housing and Rent Act of 1947 (a) 1, B and (a) 5, which she claims prevents the eviction of any lessee or sub-lessee of furnished housing accommodations used for Housekeeping.

XIV

That the Agreed Statement of Facts herein shows that since 1942, petitioner, Mrs. Reagon, had leased, by monthly lease, the whole premises Nos. 2300-2302 Ursuline Avenue from said D'Antonio.

That it further shows that the said double house contained sixteen rooms and that every one of those rooms except the two rooms rented to a Mr. Noto were used for *housekeeping purposes;* that each of those rooms were lived in and used as a *home* by the sub-lessee thereof and his family; that the usual activities and functions were conducted in each room by the various occupants thereof; that each apartment, as rented out by this petitioner, was a separate complete furnished housing accommodation for Housekeeping.

XV

Petitioner further shows that the intent and purpose of the afore-quoted paragraphs of Section 209 of the Housing and Rent Act of 1947 were to protect the *possession* of any occupant of controlled housing accommodations, under either a lease or a sub-lease, who was using the housing accommodations as housekeeping quarters for living or dwelling purposes.

XVI

That therefore this case involves the determination of a Federal question and the determination of a right claimed under said Federal law, and petitioner alleges that the decision of the Louisiana Court was against the rights she claimed under said Federal law.

XVII

That the decision of the aforesaid Court of Appeal is erroneous as a matter of law, because:

1st. That Court, as shown by Statement of Facts, p. 22 of Transcript, stated that it based its judgment on a ruling by the Rent Control Office, dated December 10, 1946, which was rendered under the 1942 Rent Act; and the 1942 Act did not contain any provisions exactly or nearly similar to

those in Section 209, a, 1 B and Section 209, a, 5 of the Housing and Rent Act of 1947.

2nd. The unambiguous language of Section 209 of the 1947 Act prevents an eviction if the accommodations are used for living or dwelling purposes or if they are furnished housekeeping accommodations used as a home—and both these bars against eviction existed here.

3rd. The Court failed to see that Paragraph a-5 and part of paragraph a, 1, B is entirely new matter (not in 1942 Act or Regulations) and that its purpose is to protect Occupancy of any controlled housing accommodations that are used for housekeeping purposes as a home, whether by one family or more than one family.

That these reasons are fully set forth in a brief filed herewith as part hereof.

XVIII

That although this is an important issue, petitioner has been advised that this precise issue has not been passed on by your Honorable Court.

That the different Rent Directors of the various areas held various ways under the 1942 Rent Act, in regard to eviction of a sub-lessee and in regard to lessees who were subletting part of the leased premises, and that there is a confusion of authority in regard to the issue involved here.

That therefore, this important issue should be set clear by a determination by this Court.

Wherefore, petitioner prays that a Writ of Certiorari may issue herein out of and under the seal of this Court to the Court of Appeal for the Parish of Orleans, Louisiana, commanding that Court to certify the case to this Court for a review and determination as provided in the Act of Congress known as the Judicial Code.

And that your petitioner may have such further and other relief in the premises as to this Court may seem appropriate and in conformity with said Act.

Mrs. Georgie Reagon, by Lewis R. Graham, Her Attorney.

AFFIDAVIT

STATE OF LOUISIANA,
*Parish of Orleans:*

Before me, the undersigned authority Personally Came and Appeared Mrs. Georgie Reagon, who did depose and say:

That she is the petitioner in the above petition that she has read the same and knows the contents thereof.

That the facts therein stated are true to the best of her knowledge, information and belief.

MRS. GEORGIE REAGON.

Sworn to and subscribed before me, June 22nd, 1948.

GEORGE PIAZZA,

[SEAL.] *Notary Public.*

## BRIEF ON BEHALF OF MRS. GEORGIE REAGON, APPLICANT

MAY IT PLEASE THE COURT:

The issue herein affects so many occupants of leased housing accommodations in every State, that we are emboldened to ask the Court's consideration of the important issue involved herein, that is, the meaning of Section 209, a, 1, B and Section 209, a, 5 of the United States Housing and Rent Act of 1947, designated hereinafter simply as Rent Act.

We urge that both the language and the intent of said Section 209 of Rent Act, justify the exercise of the Court's supervisory power.

### LIMITATION ON EVICTION

Section 209 of the Rent Act allows evictions of tenants in certain cases; but the permission is in the form of a Negative Pregnant, which does not allow the eviction UNLESS the Landlord can show the existence of one of the five conditions precedent as set forth in Paragraphs Nos. 1 to 5 of sub-section a of Sec. 209.

### Facts Preclude Application of Sub-Paragraphs 2, 3, and 4 of Sub-Section A of Section 209

Under the pleadings and the agreed Statement of Facts, there was no possible basis for the application of paragraphs 2 or 3 or 4 of sub-section a, of Section 209.

The only possible basis for the allowing of the eviction could be Sec. 209, (a) 1-B or Sec. 209, a, 5; but neither of those sections applies, as we show.

The Court of Appeal did not say on which sub-paragraph it relied, but its comment in the Agreed Statement of Facts would indicate that it based its opinion on the

fact that the tenant was using the housing accommodations for other than living or dwelling quarters, *i. e.*, sub-paragraph a, 1, B; because she had sub-leased it.

Section 209, (a) 1 B Does Not Authorize Eviction Here

The Statement of Facts conclusively negatives any right of eviction under a, 1, B.

The relevant part of that section provides that no eviction suit be maintainable—we quote—"unless the tenant is using such housing accommodations for other than living or dwelling purposes."

The error into which the Court of Appeal fell was in interpreting or interpolating the word HIS before the words "living or dwelling purposes."

The Court of Appeal interpreted the section as if it read "unless the tenant is using such housing accommodations for other than HIS living or dwelling purposes."

But the word HIS is not in the act and cannot be put there under any reasonable interpretation.

Such an interpretation and application are contrary to general law and every day experience.

RIGHT TO SUBLEASE

Every lease of real property carries the right to sub-lease, unless there is statutory or contractual prohibition—35 Corp. Jur., p. 975.

Louisiana Revised Civil Code, Article 2725 specifically allows subletting unless contracted against.

Congress is presumed to know the law—if it had intended that the tenant's protection under the Rent Act would be lost by a sub-lease of any part of the leased premises, wouldn't it have said so in plain words?

The answer is obvious.

Both Rent Acts—1942 and 1947—concerned with protect-

ing Occupancy in rented housing accommodations as well as controlling amount of rent.

As part of that dual purpose, it was necessary to prevent housing accommodations from being rented for the more lucrative purpose of trade.

Congress knew that every time a housing accommodation was converted to a purpose "other than living or dwelling" the housing shortage was increased.

Within the purpose of the Rent Act, it made no difference to Congress how many times, or to how many persons, the house was sub-let, PROVIDED ONLY that the housing accommodations, the living or dwelling purposes, were not impaired or curtailed.

It is obvious that Congress did not mean to prevent a man with four in his family subleasing a part of his house to a family of eight—such a sub-lease stretched the housing accommodations, and lessened the housing shortage.

We submit that the provision "for other than living or dwelling purposes" can refer only to the PURPOSE, not to the one exercising that purpose. We urge that no matter how many sub-leases there might be, if the last sub-lessee were living in the premises as his home, the premises were being used for living or dwelling purposes. The Act provides that to justify eviction, the accommodations must be used for OTHER THAN LIVING or dwelling purposes. The Statement of Facts shows that these premises were not so used.

The interpretation adopted by the Court of Appeal leads to the astonishing conclusion that Congress meant to jeopardize every tenant's right to possession under the Rent Act if he should sublet any part of the premises.

In view of the almost universal right to sublease, it seems clear that if Congress had intended that a sublease to another tenant, *even though for living purposes* would give a right to eviction, it would have said so in unequivocal language.

It was only necessary to insert some restrictive word, such as HIS "tenant's" before the words "living or dwelling purposes."

If that part of the Act read "other than *his* living or dwelling purposes" or "other than the tenant's living or dwelling purposes" there could be no question that the Court's opinion was justified.

But the Act does not so read—the condition precedent to authorize eviction, is for "other than living or dwelling purposes." Admittedly, 14 of the rooms were used for living and dwelling purposes.

Of course, Mrs. Reagon had the right to sublease, both by Art. 2725 of the Revised Civil Code of Louisiana but admittedly, she had the implied consent of the landlord; she had been subleasing from 1942 to 1947—Statement of Facts, p. 21, of Transcript.

We submit that the only way you can uphold the Louisiana Court's judgment is to hold that the word HIS must be read into the phrase in dispute. This is an interpretation not contemplated by Congress, according to a reasonable reading of the Act, certainly, such an interpretation is not necessary for its enforcement.

So, we come back to our original proposition—since 14 of the rooms were used for dwelling purposes, an eviction cannot be authorized here under Sec. 209, a, 1, B.

Section 209, (a) 5 Does Not Authorize Eviction Here

Eviction is not authorized here under Section 209, a, 5 because that section requires that the housing accommodations should be:

1. Non-housekeeping.

2. Furnished housing accommodations located within a single dwelling, etc.

3. Occupied in part by the landlord or his immediate family.

The Agreed Statement of Facts clearly shows that two of these three requirements for eviction DID NOT exist here—viz., these accommodations were Housekeeping not NON-Housekeeping, and no part thereof was occupied by the landlord.

We submit that the landlord cannot have an eviction unless he satisfies every applicable condition in Section 209 of the Rent Act.

Therefore, this eviction is not authorized under Section 209, a, 5.

## Pertinent Case

In closing, we ask your consideration of the only decision in point that we believe is extant—*May* v. *Demont*, 186 N. Y. Supp. 113.

The issue there was so nearly identical with the issue here, that said case should throw light on what Congress meant by the term "for other than living or dwelling purposes."

Plaintiff, landlord, had rented a 16-room house to defendant. We quote the Court's statement of the case:

> "Defendant occupied not more than one or two rooms as her dwelling and rented the other rooms to others."

The landlord claimed that to prevent eviction the whole premises had to be occupied by the original tenant herself. The New York Statute, Chap. 920 of laws of 1920 provided; in part:

> "that in view of the existing public emergency no summary proceedings shall be maintainable to recover the possession of real property occupied for dwelling purposes."

Said the Court:

> "the only question in this case is whether the house leased by the tenant is 'occupied for dwelling purposes within the meaning of the statute.' "

The court held that the whole premises, although 14 rooms were rented out to others were occupied by the defendant as her "dwelling" and refused to allow the eviction, saying:

> "Though she managed the whole house and derived her sole revenue therefrom, nevertheless the premises were occupied by her as a dwelling."

We do not for a moment suggest that that decision is binding on this Court or that Congress was bound thereby; but it is a fair presumption that Congress knew of this New York decision and also a fair presumption that Congress used the term "living or dwelling purposes" in the sense that the New York Court had interpreted the similar term in the earlier New York Statute.

**Summary**

To summarize:

1. Eviction here was not authorized by Sec. 209, a, 5, of the Housing and Rent Act of 1947 because two essential requirements were lacking, viz.: 1, the rooms were used for House keeping; and 2, no part of the premises were occupied by landlord.

2. Eviction here was not authorized by Sec. 209, a, 1 B, because every room but two was used for "living or dwelling purposes."

We respectfully submit that a Writ of Certiorari should issue herein.

Respectfully,

LEWIS R. GRAHAM,
*Attorney for Mrs. Georgie Reagon, Applicant.*

June, 1948.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1948

No. 122

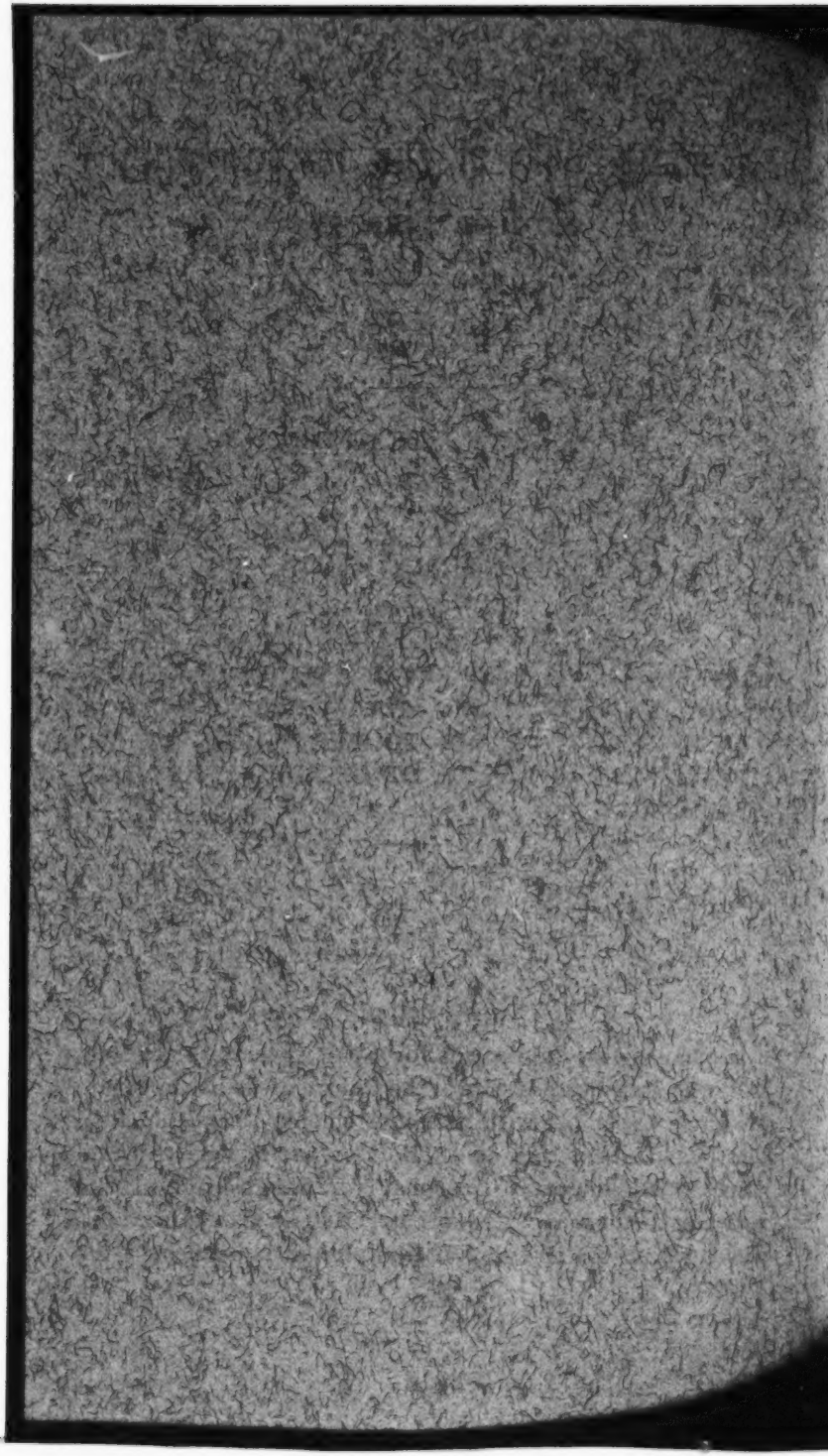
GEORGIE BRAGON,
*Petitioner,*

*vs.*

GUY J. D'ANTONIO

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

Moses C. Schantz,
L. R. Wertheimer,
*Counsel for Respondent.*



SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1948**

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# No. 122

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GEORGIE REAGON,

*Petitioner,*

*vs.*

GUY J. D'ANTONIO

---

**BRIEF ON BEHALF OF GUY J. D'ANTONIO IN SUPPORT OF OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA.**

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MAY IT PLEASE THE COURT:

I

**Jurisdiction**

In opposing the application for a writ of certiorari herein, relator is first impressed with the failure of the issue herein presented to comply with the requirements of Rule 38, Section 5 and subsection (a). Relator can conceive of no "Special and important reasons" for the granting of this writ nor is there a "Federal question of substance" involved within the meaning of this phrase as defined by the

Court; *Magnum Import Co.* v. *Coty,* 43 Sup. Ct. Rep., P. 531, 262 U. S. 159; Rule 38 of Revised Rules of the Supreme Court, 275 U. S. 622, Paragraph 5 at Page 624; Act of February 13th, 1925, 43 Stat. 936, and for particularization thereof presents:

1. The Housing and Rent Act of 1948 is temporary emergency legislation which will expire before any substantial effect (even assuming, *arguendo,* that there could be an effect of substance), could possibly flow from a review of this cause by this Court. Except as to the two individual litigants herein involved, the subject will become moot almost as soon as it is decided and thus lacks completely any question of substance of a national character.

2. Even under the "spirit" of the act, the evils to be eliminated, and the National Emergency therein recognized, this matter presents no question of "substance" as *no actual evictions are involved:*

(a) The original judgment of the trial court, in terms, merely canceled the master lease of the present "applicant" to the three (3) apartments *not* occupied by her, leaving her in full possession and tenancy of her own living quarters, (2300 Ursulines Avenue, Upper), and

(b) As to the remaining three apartments, the judgment merely granted the "constructive possession" thereof to relator *without* the right to evict any of the actual subtenants in possession. (Transcript of Record —Page 7—Judgment of the First City Court of New Orleans, which on appeal was merely "affirmed" without change in verbiage. Transcript of Record—Page 13—Folio 17—Judgment of the Court of Appeal for the Parish of Orleans).

The actual effect of this judgment is therefore to evict no one, but merely to eliminate the "Relator" as a middle-

man in a purely commercial venture of buying living space at a minimum rate and reselling it at the maximum, at the expense of the landlord. No such commercial ventures ever were within the purview of either the "Price Control Act" or the "Housing and Rent Act" and its several amendments, and the application should be denied for complete failure of a "question of substance" and utter lack of any "special and important reason" for its granting.

## II

### Merits

While there are a number of debatable inaccuracies of both law and facts set forth in appellant's petition for review and accompanying brief, which are readily apparent by reference to the pleadings, exhibits, statement of facts and statute involved, we feel in the interest of brevity, that these may be pretermitted *arguendo*, in view of appellant's expressed willingness to submit the matter for review upon the sole issue of the proper legal interpretation of Paragraph (1) & (B), Subsection A of Section 209 of the Housing and Rent Act of 1947, Public Law 129, 80th Congress.

In order to promptly simplify, for the Court's consideration, what might otherwise appear as an involved situation, and to permit the Court to quickly determine whether this issue warrants Supreme Court intervention, or whether, as we urge, the writs should be denied, the issue having been twice heard and twice correctly solved, in addition to writs being refused by the Supreme Court of Louisiana, we submit the following:

Section 209, subsection A, Paragraph 5, deals, in terms, with *"non-housekeeping"* accommodations. The pleadings and statement of fact confirm the "housekeeping" nature of the accommodations (Transcript, pp. 2, 5, 15, 16, 17).

Nowhere, since the inception of this proceeding, has relator contended that his right of possession depended in the remotest degree on the non-housekeeping nature of the accommodations. The injection of this issue is but a "red herring" across the trail.

The sole issue, as we see it, involves the following section (Housing and Rent Act of 1948):

> "Sec. 209: (a) No action to recover possession of any controlled housing accommodations shall be maintainable * * * unless—(1) *The Tenant* is * * * (B) * * * using such housing accommodations * * * for other than living or dwelling purposes." (Irrelevant matter deleted and emphasis ours.)

It is readily apparent from this quotation, and the trial and appellate courts have so decreed, that the plain intent of the statute was to make the *use* by the *tenant* the *criterion* for eviction. If the Tenant uses the accommodations for living or dwelling purposes, no eviction can be had, *but* if the *tenant* uses the accommodations for the *commercial* purpose of operating an apartment house, eviction may be had under state law and procedure. And this is also the general intent of the entire statute which, in its entirety, is limited to the protection of domestic tenants, excluding all commercial enterprises.

Congress has written into the present statute the very personal limitation that eviction is permissible whenever *"The Tenant is" "using such housing accommodations" "for other than living or dwelling purposes"*, thus explicitly eliminating from the purview of the act all commercial uses by the tenant, such as the one here involved, which is admittedly commercial in its inception, intention and operation. In fact, the statement of facts shows that *the property is not susceptible of personal use* by the appellant as it is divided into four separate and distinct apart-

ments with separate street entrances, separate baths and kitchens and separate utility installations and meters (Transcript, p. 17).

These facts, coupled with a marked distinction in the *wording* of the statute, render the only case cited by appellant completely inapposite here, *i.e.*, *May* v. *Demont*, 186 N. Y. Supp. 113.

While the New York statute is not quoted in the decision, sufficient references thereto are found in the opinion to fix the point. In the opinion, on page 115, we find the following quotation, viz.:

> "When the Legislature used the words, "Occupied for dwelling purposes, etc."

The Court will readily distinguish between that verbiage,

*"Occupied for Dwelling Purposes"*

which deals only with the *occupancy*, disregarding entirely by *whom* occupied, and the verbiage of the present statute,

> *"The Tenant * * * is using such housing accommodations * * * for other than living or dwelling purposes.",*

which limits the use or occupancy to the tenant.

Additionally, the facts in the *May* case are entirely different from those in the case at bar. There, it was a *single house* of 16 rooms where rooms were rented out within the household. Here, we have *no household* but a building composed of separate and distinct housekeeping units, as distinct as though they were in separate buildings, with separate entrances, baths, kitchens and utilities (Transcript p. 17), an entirely different situation from a single home where the roomers are almost part of one family. There, the tenant might claim it as a *home*, and certainly it was "occupied for dwelling purposes"; but here, the best the

tenant can do is to claim it as her *business* and certainly it is not occupied *by the tenant* for dwelling purposes as required by the instant statute.

We therefore respectfully submit that the application for a writ of certiorari should be denied for the reason that there are no "special and important reasons" for the granting of same nor is there a "Federal question of substance" involved and for the further reason that the applicable statute has been correctly interpreted and applied by the trial and appellate courts.

Respectfully submitted,

Moses C. Scharff &
L. R. Wertheimer,
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(8069)